

IN THE UNITED STATE DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

DANIEL ARMENDARIZ #313909,

Plaintiff

v.

COMMISSIONER DUN, et al.,

Defendants

CIVIL ACTION NO. 2:19-CV-1046-WHA

AMENDED COMPLAINT

I. JURISDICTION & VENUE

1. This is a civil action authorized by 42 U.S.C. section 1983 to redress the deprivation, under color of state law, of rights secured by the constitution of the United State. The Amended complaint is governed by Rule 15 of the Federal Rules of civil procedure. The court has jurisdiction under 28 U.S.C. section 1331 and 1343 (a) (3). Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. section 2283 & 2284 and Rule 65 of the Federal Rules of civil procedure.

2. The UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION is an appropriate venue under 28 U.S.C. section 1391 (b) (2) because it is where the events giving rise to this occurred.

II. PLAINTIFFS

3. Plaintiff, [DANIEL ARMENDARIZ #313909], is and was at all times mentioned herein a prisoner of the State of [ALABAMA] in the custody of the Alabama Department of corrections. He is currently confined in [Elmore correctional Facility], in Elmore, Alabama.

III. DEFENDANTS

4. Defendant, [JEFFERSON DUNN] is the commissioner of the state of Alabama Department of corrections. He is legally responsible for the overall operation of the Department and each institution under its jurisdiction, including Elmore correctional Facility.

5. Defendant, [JOSEPH HEADLY] is the Warden of state Correctional Facility. At the time of the incident mentioned in the instant complaint he was the warden at Elmore Correctional Facility. He was legally responsible for the operation of Elmore Correctional Facility and for the welfare of all the inmates in that prison at the time of the incident.

6. Defendant, [ BRAND ] is a correctional officer of the Alabama Department of corrections, who, at all times mentioned in this complaint, held the rank of [C.O.] and was assigned to Elmore Correctional Facility in Bravo Dorm one at the time of the incident mentioned in the instant complaint.

7. Defendant, [John Doe 2 ] is a correctional officer of the Alabama Department of Corrections who, at all times mentioned in this complaint, held the rank of [C. O.] and was assigned to Elmore Correctional Facility in Bravo Dorm two at the time of the incident, but shared an observation space with the officer assigned to Bravo Dorm one at the time of the incident mentioned in the instant complaint.

8. Defendant, [K. Davis] is a correctional officer of the Alabama Department of Corrections who, at all times mentioned in this complaint, held the rank [Lieutenant] and was assigned to Elmore Correctional Facility as the commanding officer for that shift at the time of the incident. She is legally responsible for all overall operation of the Elmore Correctional Facility at the times of the incident as well as the welfare of all inmates in that prison at the time of the incident mentioned in the instant complaint.

9. Defendant, [Wexford Health Sources Inc.] is a corporation doing business in the state of Alabama Department of Corrections. Wexford Health Services Inc. is legally responsible for outsourcing for medical professionals for the Alabama Department of Corrections. They are responsible for the overall operation of medical staff, policies, procedures, and protocols that the medical staff go by. They are responsible for screening and ensuring that the medical staff is qualified to do their job.

10. Each defendant is sued individually and his [or her] official capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

#### IV. FACTS

11. ON THE 3rd DAY OF AUGUST, 2018 AT [1600] HOURS PLAINTIFF, [DANIEL ARMENDARIZ#313909] WAS ASSAULTED BY INMATE [ERNEST WHITE] AT ELMORE CORRECTIONAL FACILITY IN BRAVO DORM ONE. AFTER FIGHTING FOR MY LIFE FOR TWENTY MINUTES OR MORE. I MANAGED TO GET LOOSE AND MAKE IT TO THE OBSERVATION CUBE WHERE DEFENDANT, [OFFICER BRAND ] AND DEFENDANT, [ JOHN DOE 2 ] WAS ON DUTY AND SITTING DOWN WHEN I KNOCKED ON THE DOOR. I WAS THEN TAKEN TO THE SHIFT OFFICE WHERE OFFICER, [CARSTRAPHEN] AND DEFENDANT, [LT. K.DAVIS] WAS ON DUTY AND THE TIME OF INJURY WAS LOGGED IN AT [1635] HOURS. AFTER ABOUT THIRTY MINUTES OR MORE I WAS TAKEN TO THE M/U AT STATON CORRECTIONAL FACILITY TWO MILES DOWN THE ROAD WHERE I WAS SEEN BY [P. ROBINSON LPN] AND ANOTHER NURSE THAT ARE EMPLOYED BY [WEXFORD HEALTH SOURCES INC.]. THE TIME RECORDED IN IS AT [1735] HOURS. RMD "REFERRING SITE PHYSICIAN"[MD. BORWICZ] CALLED AT [1808] HOURS. I'M THEN TRANSPORTED TO JACKSON HOSPITAL TIME LOGGED OUT IS [1830] HOURS. AT [1836] HOURS CHELSEA RN. FROM JACKSON HOSPITAL WAS SPOKEN TOO. I ARRIVE AT JACKSON HOSPITAL'S EMERGENCY ROOM AT [ ] HOURS.

12. SEE DECLARATION FROM PLAINTIFF FILED WITH INSTANT COMPLAINT AND WILL BE MARKED AS EXHIBIT "A" SEE ALSO EXHIBIT "B".

13. SEE ALSO [WEXFORD HEALTH SOURCES INC.] SPECIAL REPORT [EXHIBIT "A"] FOR LOGGED TIMES. VIEW PROGRESS NOTE, BODY CHART, ABRASIONS AND LACERATIONS AND MEDICAL DIRECTOR QA EMERGENCY REPORTING FORM.

#### V. EXHAUSTION OF LEGAL REMEDIES

14. PLAINTIFF, [DANIEL ARMENDARIZ#313909] USED THE PRISONER MEDICAL GRIEVANCE PROCEDURE AVAILABLE AT ELMORE CORRECTIONAL FACILITY TO OBTAIN MEDICAL RECORDS FROM [WEXFORD HEALTH SOURCES I INC.] . ON THE 26th DAY OF JULY, 2019 PLAINTIFF REQUESTED MEDICAL RECORDS RELATED TO THE INCIDENT, SO A PROPER GRIEVANCE COULD BE FILED. ON THE 30th DAY OF JULY, 2019 PLAINTIFF GOT A RESPONSE SAYING THAT I NEED TO HAVE MY ATTORNEY TO GET THOSE RECORDS SEE EXHIBIT "B". DENIAL OF THOSE RECORDS MADE IT IMPOSSIBLE FOR ME TO PROPERLY EXHAUST ADMINISTRATIVE REMEDIES. THEREFORE MAKING ADMINISTRATIVE REMEDIES NO LONGER AVAILABLE TO ME.

15. PLAINTIFF ALSO MAILED OUT A LETTER TO DEFENDANT, [JEFFERSON DUNN] ON THE 26th DAY OF JULY, 2019. I WAITED FOR THIRTY DAYS AND GOT NO RESPONSE, SO I MAILED OUT ANOTHER LETTER AS AN APPEAL ON THE 28th DAY AUGUST, 2019. I WAITED FOR A RESPONSE UNTIL DECEMBER, 2019. WHEN I RECIEVED NO RESPONSE I MAILED OUT A INSTANT COMPLAINT UNDER 42 U.S.C 1983.

16. SEE ALSO EXHIBIT "B"

VI. LEGAL CLAIMS

17. Plaintiff re-allege and incorporate by reference "EXHIBITS [A], [B], [C].

18. Defendant [Jefferson Dunn] Commissioner of the Alabama Department of Corrections and Defendant [Joseph Headly] Warden at Elmore Correctional Facility at the time of the incident. Both Defendants named above knew prior to the Plaintiff's assault that "overcrowding" and "understaffing" created a health-safety hazard to prisoner showed deliberate indifference by not correcting those issues. Violated Plaintiff [Daniel Armendariz #313909] rights and constituted "cruel and unusual punishment" under the [Eighth Amendment] to the United States Constitution.

19. Defendant, Officer [ **BRAND** ] was the dorm officer on duty in Bravo Dorm one. Defendant, Officer [~~JOHN DOE~~ **2** ] shared an observation space with Officer [**BRAND** ], but was the dorm officer for Bravo Dorm two. Both officers named above knew prior to Plaintiff [Daniel Armendariz #313909] assault that Bravo Dorm one and two was more violent than the other dorms and Bravo Dorm one was known as the "thunder dome." Both officers showed deliberate indifference to Plaintiff [Daniel Armendariz #313909] safety by not making routine walks or observations from the observation cube. Violated Plaintiff [Daniel Armendariz #313909] rights and constituted "cruel and unusual punishment" under the [Eighth Amendment] to the United States Constitution.

20. Defendants [K. Davis] and [Wexford Medical Sources Inc.] delayed Plaintiff [Daniel Armendariz #313909] emergency medical care up to three hours and showed deliberate indifference to those needs. Violated Plaintiff [Daniel Armendariz #313909] rights and constituted "cruel and unusual punishment" under the [Eighth Amendment] to the United States Constitution.

21. The plaintiff has no plan, adequate or complete remedy at law to redress the wrongs described here in. plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the injunctive relief which the plaintiff seeks.

VII. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF RESPECTFULLY PRAYS THAT THIS COURT ENTER JUDGEMENT GRANTING PLAINTIFF:

22. A DECLARATION THAT THE FACTS AND OMISSIONS DESCRIBED HEREIN VIOLATED PLAINTIFF'S RIGHT UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES.

23. A PERMANENT INJUNCTION ORDERING DEFENDANTS:[TO STOP COMMON PRACTICE OR CHANGE POLICY,PROCEDURES AND PROTOCOLS THAT DELAY A PRISONER FROM GETTING EMERGENCY MEDICAL CARE WHEN THE NEED IS OBVIOUS. PLACE A TRAINED MEDICAL PROFESSIONAL AT ELMORE CORRECTIONAL FACILITY 24 HOURS A DAY OR AN OFFICER THAT IS TRAINED IN BASIC LIFE SAVING TECHNIQUES AND CAN RECOGNIZE WHEN A PRISONER IS SERIOUSLY INJURED.

24. COMPENSATORY DAMAGES IN THE AMOUNT OF \$150,000.000 JOINTLY AND SEVERALLY.

25. PUNITIVE DAMAGES IN THE AMOUNT OF \$200,000.00 JOINTLY AND SEVERALLY.

26. A JURY TRIAL ON ALL ISSUES TRIABLE BY JURY.

27. PLAINTIFF'S COST IN THIS SUIT.

28. ANY ADDITIONAL RELIEF THIS COURT DEEMS JUST,PROPER AND EQUITABLE.

RESPECTFULLY SUBMITTED,

04-08-20

DATE

Daniel Armendariz

SIGNATURE

Daniel Armendariz

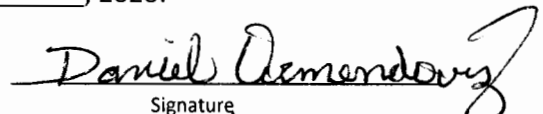
PRINT NAME

ELMORE CORRECTIONAL FACILITY  
3520 MARION SPILLWAY ROAD  
ELMORE, AL 36025

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to the matters alleged on information and belief, and as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.


Executed at Elmore Alabama on the 8 day of April, 2020.

  
Signature  
Daniel Armendariz  
Print Name  
Elmore Correctional Facility  
3520 Marion Spillway Rd.  
Elmore, AL 36025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE ON THIS 8 DAY OF April, 20  
CAUSED A TRUE AND CORRECT COPY OF THE FOREGOING TO BE SERVED UPON  
THE DEFENDANTS AND CLERK BY PLACING THE SAME IN THE U.S. MAIL  
POSTAGE PREPAID AND ADDRESSED ASS FOLLOWS:

<u>WEBSTER HENRY, P.C.</u>	<u>ATTORNEY GENERAL</u>
<u>TWO PERIMETER PARK S. SUITE 445 E.</u>	<u>501 WASHINGTON AVE.</u>
<u>BIRMINGHAM, AL 35243</u>	<u>MONTGOMRY, AL 36130</u>

  
SIGNATURE  
Daniel Armendariz  
PRINT NAME

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3520 MARION SPILLWAY ROAD  
ELMORE, AL 36025